

### **REMARKS**

Claims 1-3 have been amended and claims 9-16 have been added herein. Thus, claims 1-21 are currently pending in the application. It is respectfully submitted that the amendments to claims 1-3 and the addition of new claims 9-16 does not add new matter.

The Specification has also been amended to correct for minor non-substantive errors of form identified by the Examiner. It is respectfully submitted that these amendments do not add new matter and have adequate support throughout the Specification.

Additionally, Applicant reminds the Examiner that, in addition to the Information Disclosure Statement (IDS) submitted concurrently with the application, a second IDS and accompanying PTO-1449 form was submitted to the Office on April 28, 2006. Applicant respectfully requests that the Examiner consider the references identified by the IDS dated April 28, 2006, and provide Applicant with an initialed copy of the PTO-1449 form.

Otherwise, Applicant traverses all objections and claim rejections for the reasons that follow:

#### **I. OBJECTIONS TO THE SPECIFICATION**

The Office Action objects to various informalities in the disclosure. For example, the Office Action objects to unknown symbols used on pages 3 and 4 and contends that "If all the variables" recited on page 23, line 17 should read "If any of the variables". Applicant has amended the Specification to address these concerns. It is respectfully submitted that the amendments to the Specification do not add new matter.

The Office Action also contends that the term "mobile station" recited on page 12, line 26 and page 13, line 1 should read "base station". Applicant respectfully submits that these sections are properly discussing mobile station transmission and reception powers respectively and, as such, that no correction is required.

The Office Action also contends that the term "variables n are '+'" recited on pages 23, lines 24-25 and 27 should read "variables n are '-'". Applicant respectfully contends that the term is proper as written and consistent with the Specification, as well as with amended Figure 5 submitted herewith.

For at least the foregoing reasons, it is kindly requested that the objections to the Specification be withdrawn.

## **II. OBJECTIONS TO THE CLAIMS**

The Office Action objects to the term "transmitter/receiver" used in claims 1 and 3. Applicant has amended the claims to address the Examiner's concerns. It is respectfully submitted that the amendments do not add new matter, nor do they narrow the scope of the claims. Withdrawal of the claim objections is therefore respectfully requested.

## **III. REJECTIONS OF CLAIMS 2-6 UNDER 35 U.S.C. §112, ¶2**

Claims 2-6 were rejected as indefinite under 35 U.S.C. §112, ¶2 for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has amended claims 1 and 2 herein to address the Examiner's §112, ¶2 concerns. It is respectfully submitted that the amendments do not add new matter and do not narrow the scope of the claims. It is therefore kindly requested that the rejections of claims 2-6 under 35 U.S.C. §112, ¶2 be withdrawn.

**IV. REJECTIONS OF CLAIMS 1, 2, 4, AND 7 UNDER 35 U.S.C. § 102(b)**

Claims 1, 2, 4, and 7 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,542,097 to Ward et al. ("Ward"). Respectfully, Applicant traverses.

Claim 1 recites that the determining means (1) determines that "*a transmitter or receiver . . . has a failure* if said difference checking means determines that the difference falls outside the predetermined allowable range" and (2) identifies "said transmitter or receiver that has a failure." Nowhere in Ward is discussed using a pathloss difference to determine whether a component of a communication system failed, much less to determine that "a transmitter or a receiver . . . has a failure" and to identify the transmitter or receiver which has the failure.

The Office Action disagrees and contends that Ward discloses this feature because equation 5 at column eight of Ward "checks whether a difference between the bidirectional propagation losses falls within a predetermined allowable range by determining an error value  $m$ ," and that equation 9 at column nine of Ward indicates failure if "a pathloss difference that exceeds a predetermined allowable range for either, and not both, of the communication cells, indicates a failure." (Office Action, at pgs. 13-14).

Initially, Applicant notes that equation 5 at column eight and equation 9 at column nine are discussed with respect to two separate and distinct embodiments of Ward and, as such, are not properly read together in the manner suggested by the Office Action. Regardless, it is understood that Ward discloses only two possible causes for the pathloss difference (i.e., error): (1) measurement errors; or (2) "cochannel radio energy or other disturbances" if equation 9 is to be used to infer the error, as suggested by the Office Action. (Ward; col. 8, lines 39-41; col. 9, lines 15-17). There is absolutely nothing in Ward

which teaches that the difference (i.e., error) in bidirectional pathloss is caused by a transmitter or receiver failure and, therefore, nothing in Ward which discloses a determining means which determines that "*a transmitter or receiver . . . has a failure* if said difference checking means determines that the difference falls outside the predetermined allowable range" and which identifies "said transmitter or receiver" having the failure, as recited in claim 1. Indeed, the fact that Ward suggests other causes for the pathloss difference/error teaches away from Applicant's invention entirely.

For at least the foregoing reasons, it is respectfully submitted that claim 1 is allowable over Ward. Furthermore, since claims 2, 4, and 7 ultimately depend from claim 1, it is respectfully submitted that these claims are allowable over Ward for at least the same reasons. Accordingly, it is kindly requested that the rejections of claims 1, 2, 4, and 7 under 35 U.S.C. § 102(b) be withdrawn.

**V. REJECTIONS OF CLAIMS 3, 5, 6, AND 8 UNDER 35 U.S.C. § 103(a)**

Claim 3 was rejected under 35 U.S.C. § 103(a) as unpatentable over Ward in view of U.S. Patent Publication No. 2002/0058493 to Ikeda et al. ("Ikeda"); claim 5 was rejected under 35 U.S.C. § 103(a) as unpatentable over Ward in view of Ikeda, and further in view of U.S. Patent Publication No. 2002/0064131 to Boesinger et al. ("Boesinger"); claim 6 was rejected under 35 U.S.C. § 103(a) as unpatentable over Ward in view of Boesinger; and claim 8 was rejected under 35 U.S.C. § 103(a) as unpatentable over Ward in view of Japanese Patent Application Publication No. 63-200626 to Iwasaki et al. ("Iwasaki"). Respectfully, Applicants traverse.

As discussed above with respect to the anticipation rejections of claims 1, 2, 4, and 7, Ward fails to disclose each and every feature of independent claim 1, from which claims 3,

5, 6, and 8 ultimately depend. For example, Ward fails to disclose determining that “*a transmitter or receiver . . . has a failure* if said difference checking means determines that the difference falls outside the predetermined allowable range,” nor does it disclose “identifying said transmitter or receiver” which has the failure. Furthermore, any reading of Ikeda, Boesinger, and/or Iwasaki makes clear that these references fail to cure the critical deficiencies of Ward as applied against claim 1.

For at least the foregoing reasons, it is respectfully submitted that claims 3, 5, 6, and 8 are allowable over Ward, Ikeda, Boesinger, and/or Iwasaki individually or in combination. Accordingly, it is kindly requested that the rejections of claims 3, 5, 6, and 8 under 35 U.S.C. § 103(a) be withdrawn.

#### **VI. NEW CLAIMS 9-16**

Claims 9-16 have been added herein, of which claims 9 and 14 are in independent form. It is respectfully submitted that these claims do not add new matter and have adequate support throughout the Specification. Furthermore, independent claims 9 and 14 recite “[indicating/detecting] a failure in the transmitter or the receiver if a difference between the upstream and downstream propagation losses exceeds a threshold value.” As discussed above with respect to the rejections of claims 1-8, the cited references fail to disclose this novel and unobvious feature. Accordingly, it is respectfully submitted that claims 9 and 14 are allowable over the cited references. Furthermore, since claims 10-13 ultimately depend from claim 9, and since claims 15 and 16 ultimately depend from claim 14, it is respectfully submitted that these claims are allowable over the cited references for at least the same reasons.

**VII. CONCLUSION**

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

Dated: February 20, 2007

Respectfully submitted,

By 

Bryan N. DeMatteo

Registration No.: 51,608

DICKSTEIN SHAPIRO LLP

1177 Avenue of the Americas

41st Floor

New York, New York 10036-2714

(212) 277-6500

Attorney for Applicant